

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON: NOVEMBER 21, 2011

+ CRL. L.P. No. 356/2011 and CrI. M.A 8685/2011

STATE Petitioner
Through: Mr. Rajesh Mahajan, Addl. Standing Counsel.

versus

SANJAY @ POCHY & ANR Respondents
Through: None.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MS. JUSTICE PRATIBHA RANI

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The State seeks leave to appeal against the judgment and order dated 13th October, 2010 passed by the learned Addl. Sessions Judge in SC No.6/08, whereby the respondents/accused namely Sanjay and Vijay Pal were acquitted for the charges punishable under Section 307/34 IPC.
2. The case relates to the incident which occurred on 01.10.2006 at 5:45 PM at Sangam Vihar, New Delhi. The Police apparently received intimation that someone had received knife injuries and had been rendered unconscious near House No.250,

Block L-1. ASI Vijender Singh was assigned the enquiry of the case; he reached the hospital and found the victim Veer Singh(PW-1) fit for statement. After collecting the MLC of the victim (proved as Ex. PW-3/A), the Police proceeded to investigate the incident and after conclusion of the proceedings, charged the respondents along with one Suresh for the offences mentioned previously.

3. According to the prosecution, another assailant one Bengali @ Chhotu was also involved in the incident; however he could not be arrested and was accordingly declared a proclaimed offender (P.O) by the Trial Court. He did not stand the trial. The present respondents/accused denied the charges and claimed trial. After considering the materials on record and the testimonies of the prosecution witnesses, the Trial Court acquitted the present respondents/accused and convicted accused Suresh for the offence punishable under Section 307 IPC.

4. Mr. Rajesh Mahajan, the learned Addl. Standing Counsel for the State argued that the learned Trial Court fell into grave error in acquitting the respondents/accused. It was further argued that the Trial Court ought not to have ignored the testimony of the injured eye witness (PW-1), who spoke about the role of the two respondents i.e. that they caught hold of him when Suresh wielded a knife and inflicted the injuries in question. Counsel urged that having regard to the situs of the injuries and also the circumstance that a previous altercation had occurred just a day before, the role attributed to the present respondents/accused was specific and the Trial Court could not have differentiated the role in the manner while acquitting them.

5. We have considered the materials on record. The MLC in this case was proved by PW-3 the Doctor as Ex.PW-3/A who examined the injured victim i.e. PW-1. The injuries inflicted were 3 x 2 cm laceration on the left side of the chest and another laceration measuring 2 x 2 cm on the right side of the groin i.e. thigh region. The substratum of the Trial Court's reasoning acquitting the respondent/accused is to be found in its judgment, to the following effect:

“Then comes the role of the accused persons for the determination of their crime. Injury was caused by accused Suresh @ Boni and weapon knife was provided to him by accused Chotu @ Bengali and that Chotu @ Bengali could not be arrested in this case as he was found absconding. Role attributed to other two accused Sanjay @ Pochy and Vijay @ Makhan is that they first called victim Veer Singh from his house and as victim reached the place of occurrence and before he was given knife blow assault by Suresh, these two accused caught hold of victim. These two accused persons have disputed the testimony of the victim. If we visualize the situation that victim had been caught hold of by these two accused persons and if knife blows were given by accused Suresh then that blow injury would have been more serious. Accordingly role of these two accused to have caught hold of victim becomes a little doubtful. Admittedly knife given to accused Suresh by absconding accused Chotu @ Bengali had been taken out by him as concealed underneath his shirt. If these two accused namely Sanjay and Vijay were not aware of any such weapon brought by accused Chotu @ Bengali then a common intention to cause injury by deadly weapon could not be assigned to these two accused persons. Merely they called victim from the house may not by itself be sufficient to enter a common intention shared by them with accused Suresh or absconding accused Chhotu @ Bengali. These two accused Sanjay and Vijay deserve a benefit of doubt and they cannot be convicted for the offence committed by accused Suresh and other accused with the help of Section 34 IPC.

Accused Suresh @ Boni is liable to be convicted for an offence U/s 307 IPC. The weapon used, the part of the body targeted for injury and the nature of the injury caused in the assault are the factors wherefrom necessary intention or knowledge of the assailants can be drawn and gathered. Accused Suresh inflicted blow by a Chhuri on the chest and the thigh region of the victim and injury was found to be grievous in nature and victim had to be treated for about 5 to 6 days in the hospital as indoor patient, necessary intention on the part of accused Suresh that he intended to cause that injury and he had a knowledge that in circumstances if he caused death of the victim he would have been guilty of offence of murder, he is liable to be convicted U/s 307 IPC. I accordingly convict accused Suresh for offence U/s 307 IPC. He is acquitted of the charge U/s 25 Arms Act and other two accused Sanjay and Vijay are acquitted of offence U/s 307 IPC”.

6. It is now well settled that the High Court in exercise of its jurisdiction, while considering the leave petition by the State against the acquittal recorded by the criminal court, does not exercise the appellate powers. It has only to consider as to whether the judgment impugned before it discloses substantial or compelling reasons – expressions which include or extend to gross mis-appreciation of facts or evidence and/or serious error in understanding and application of law which leads to manifest miscarriage of justice. In the present case, the Trial Court disbelieved the role attributed to the respondents/accused by PW-1, reasoning that had they in fact caught hold of him, the injuries would have been graver. Furthermore, the Trial Court also took into consideration the situs of the two injuries. These two reasons in this Court's opinion would show that the Trial court chose to adopt the approach favourable to the accused that two reasonable views were possible. It is also settled law that in such circumstances, the Appellate Court in exercise of its jurisdiction would be circumspect in discarding such finding merely in order to substitute its own opinion.
7. On application of settled principles, we are satisfied that the leave petition is unmerited and the same is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

PRATIBHA RANI
(JUDGE)

NOVEMBER 21, 2011
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